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AN ACT

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RELATING TO BOATS; CHANGING REQUIREMENTS AND DUTIES PERTAINING TO
BOAT DEALER AND MANUFACTURER NUMBERS; REQUIRING BOAT DEALERS AND
MANUFACTURERS TO OBTAIN DEALER LICENSES; ESTABLISHING
REQUIREMENTS AND DUTIES PERTAINING TO DEALER LICENSES; ESTABLISHING
LICENSE FEES; PROVIDING A PENALTY; AMENDING, REPEALING AND ENACTING A
SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-4-1 NMSA 1978 (being Laws 1978, Chapter 35, Section
214, as amended) is amended to read:

"66-4-1. DEALERS, WRECKERS, WHOLESALERS AND DISTRIBUTORS OF
VEHICLES AND TITLE SERVICE COMPANIES MUST BE LICENSED--PRESUMPTION
OF CONDUCTING BUSINESS.--

A. A person, unless licensed to do so by the department, shall
not carry on or conduct the active trade or business of:

(1) a dealer in motor vehicles of a type subject to registration
pursuant to the Motor Vehicle Code, including:

- (a) trailers, but not trailers sold as kits;
- (b) recreational vehicles designed to be towed; and
- (c) motorcycles over fifty-five cubic centimeters;

(2) dismantling any vehicle for the resale of the parts. Any
person possessing three or more wrecked, dismantled or partially wrecked or
dismantled vehicles and selling or offering for sale a used vehicle part and who
regularly sells or offers for sale used vehicles or used vehicle parts shall be presumed
to be conducting the business of wrecking or dismantling a vehicle for the resale of the
parts;

(3) wholesaling of vehicles. Any person who sells or offers for

1 sale vehicles of a type subject to registration in this state, to a vehicle dealer licensed
2 pursuant to the Motor Vehicle Code or who is franchised by
3 a manufacturer, distributor or vehicle dealer to sell or promote the sale of vehicles
4 dealt in by such manufacturer, distributor or vehicle dealer shall be presumed to be
5 conducting the business of wholesaling;

6 (4) distributing of vehicles. Any person who distributes or sells
7 new or used motor vehicles to dealers and who is not a manufacturer shall be
8 presumed to be conducting the business of distributing vehicles; or

9 (5) a title service company. Any person who for consideration
10 prepares or submits applications for the registration of or title to vehicles shall be
11 presumed to be engaging in the business of a title service company.

12 B. Application for a dealer, wholesaler, distributor or wrecker of
13 vehicles license or a title service company license shall be made upon the form
14 prescribed by the department and shall contain the name and address of the applicant
15 and, when the applicant is a partnership, the name and address of each partner or,
16 when the applicant is a corporation, the names of the principal officers of the
17 corporation and the state in which incorporated and the place where the business is to
18 be conducted and the nature of the business and such other information as may be
19 required by the department. Every application shall be verified by the oath or
20 affirmation of the applicant, if an individual, or, in the event an applicant is a
21 partnership or corporation, by a partner or officer of the partnership or corporation.
22 Every application shall be accompanied by the fee required by law.

23 C. A metal processor or dealer in scrap who dismantles, processes for
24 scrap, shreds, compacts, crushes or otherwise destroys more than three vehicles
25 within a period of one year shall be licensed pursuant to the provisions of Sections 66-
4-1 through 66-4-9 NMSA 1978.

D. To ensure that a dealer, wholesaler, distributor, wrecker of vehicles
or title service company complies with this section, the secretary may apply to a district
court of this state to have a person operating without a license as required by this

1 section or operating without the bond required by Section 66-4-7 NMSA 1978 enjoined
2 from engaging in business until that person complies with the requirements of licensing
3 as provided by this section and the bonding requirements of Section 66-4-7 NMSA
4 1978.

5 E. Upon application to a court for the issuance of an injunction against
6 an unlicensed person, the court may issue an order temporarily restraining that
7 person from doing business. The court shall hear the matter within three days and,
8 upon a showing by the preponderance of the evidence that the person is operating
9 without a license and that the person has been given notice of the hearing as required
10 by law, the court may enjoin the person from engaging in business in New Mexico until
11 the person ceases to be unlicensed. Upon issuing an injunction, the court may also
12 order the business premises of the person to be sealed by the sheriff and may allow
13 the person access thereto only upon approval of the court.

14 F. A temporary restraining order shall not be issued against a person
15 who has complied with the provisions of this section. Upon a showing to the court by a
16 person against whom a temporary restraining order has been issued that he has a
17 license in accordance with the provisions of this section, the court shall dissolve or set
18 aside the temporary restraining order."

19 Section 2. Section 66-12-3 NMSA 1978 (being Laws 1959, Chapter 338,
20 Section 3, as amended) is amended to read:

21 "66-12-3. DEFINITIONS.--As used in the Boat Act:

22 A. "vessel" means every description of watercraft, other than a
23 seaplane on the water, used or capable of being used as a means of transportation on
24 water;

25 B. "motorboat" means any vessel propelled by machinery, whether or
not machinery is the principal source of propulsion, but does not include a vessel that
has a valid marine document issued by the bureau of customs of the United States
government or any federal agency successor thereto; "motorboat" includes any vessel
propelled or designed to be propelled by sail and that does not have a valid document

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1 issued by a federal agency, but does not include a sailboard or windsurf board;

2 C. "owner" means a person, other than a lienholder, having the
3 property in or title to a motorboat; "owner" includes a person entitled to the use or
4 possession of a motorboat subject to an interest in another person, reserved or
5 created by agreement and securing payment or performance of an obligation, but
6 excludes a lessee under a lease not intended as security;

7 D. "waters of this state" means waters within the territorial limits of this
8 state;

9 E. "person" means an individual, partnership, firm, corporation,
10 association or other entity;

11 F. "operate" means to navigate or otherwise use a motorboat or a
12 vessel;

13 G. "state agency" means any department, institution, board, bureau,
14 commission, district or committee of the government of this state and means every
15 office or officer of any state agency;

16 H. "subdivision of the state" means every county, county institution,
17 board, bureau or commission, incorporated city, town or village, drainage,
18 conservancy, irrigation or other district and every office or officer of any subdivision of
19 this state;

20 I. "division" means the state parks division of the energy, minerals and
21 natural resources department;

22 J. "boat" means a motorboat that is ten feet in length or longer;

23 K. "dealer" means any person who engages in whole or in part in the
24 business of buying, selling or exchanging new and unused motorboats or used
25 motorboats, or both, either outright or on conditional sale, bailment, lease, chattel
mortgage or otherwise and who has an established place of business for sale, trade
and display of motorboats; "dealer" includes a yacht broker;

L. "lien" means every chattel mortgage, conditional sales contract,
lease, purchase lease, sales lease, contract, security interest under the Uniform

1 Commercial Code or other instrument in writing having the effect of a mortgage or lien
2 or encumbrance upon, or intended to hold the title to any boat in the former owner,
3 possessor or grantor;

4 M. "manufacturer" means any person engaged in the business of
5 manufacturing or importing new and unused motorboats for the purpose of sale or
6 trade;

7 N. "demonstration" means:

8 (1) the operation of a motorboat on the waters of this state for
9 the purpose of selling, transferring, bartering, trading, negotiating or attempting to
10 negotiate the sale or exchange of an interest in a
11 motor boat; or

12 (2) the operation of a motorboat by a manufacturer for the
13 purpose of testing the motorboat; and

14 O. "established place of business" means a salesroom in an enclosed
15 building or structure that the dealer owns or leases, where the business of bartering,
16 trading and selling of motorboats is conducted and where the books, records and files
17 necessary to conduct the business are maintained."

18 Section 3. Section 66-12-6 NMSA 1978 (being Laws 1965, Chapter 48,
19 Section 1, as amended) is amended to read:

20 "66-12-6. DEALER AND MANUFACTURER NUMBERS--FEE--CERTIFICATES
21 OF ORIGIN--RECORDS.--

22 A. A dealer or manufacturer that demonstrates motorboats on the
23 public waters of this state shall file an application for a dealer or manufacturer number.
24 The number shall be in lieu of a certificate of number for each motorboat intended or
25 offered for sale.

26 B. Application for a dealer or manufacturer number shall be in the form
27 prescribed by the division. The application shall state that the applicant is a motorboat
28 dealer or manufacturer and that the applicant will operate a motorboat upon the
29 waters of this state only for test or demonstration purposes. The statement shall be

1 verified before a state officer who is authorized to administer an oath. The fee for a
2 dealer or manufacturer number is ten dollars (\$10.00) annually as prescribed by the
3 division.

4 C. The division shall issue a certificate of a dealer or manufacturer
5 number to an applicant who submits a complete application and full payment of the
6 dealer or manufacturer number fee to the division. The certificate shall be issued after
7 the applicant obtains a dealer license from the motor vehicle division of the taxation
8 and revenue department and shall contain the following:

9 (1) a dealer or manufacturer number that contains two state
10 identification letters, followed by four numbers and two additional letters that are
11 unique to dealers or manufacturers;

12 (2) the expiration date of the certificate;

13 (3) the name and business address of the applicant;

14 (4) the address of the principal place of business of the
15 applicant; and

16 (5) a conspicuous statement that the division has certified the
17 applicant as a dealer or manufacturer.

18 D. The dealer or manufacturer number shall be painted on or attached
19 to plates that are firmly attached to each side of the front of a motorboat of the dealer
20 or manufacturer while it is afloat upon the waters of this state.

21 E. A dealer or manufacturer who operates more than one motorboat
22 for test or demonstration purposes on the waters of this state at the same time shall
23 obtain and display a separate dealer or manufacturer number for each motorboat
24 tested or demonstrated.

25 F. A manufacturer or dealer shall not transfer ownership of a new boat
without supplying the transferee with the manufacturer's certificate of origin signed by
the manufacturer's authorized agent. The certificate shall contain information the
division requires.

G. Every dealer shall maintain for three years a record of any boat he

1 bought, sold, exchanged or received for sale or exchange. This record shall be open
2 to inspection by division representatives during reasonable business hours."

3 Section 4. A new section of the Boat Act is enacted to read:

4 "PROHIBITED DISPLAY OF DEALER OR MANUFACTURER NUMBERS.--A
5 dealer or manufacturer shall not display a dealer or manufacturer number on a
6 motorboat that is not being operated for test or demonstration purposes."

7 Section 5. A new section of the Boat Act is enacted to read:

8 "DEALER LICENSE.--

9 A. A person shall not engage in business as a dealer or manufacturer
10 without obtaining a valid dealer license from the motor vehicle division of the taxation
11 and revenue department, unless the person has a valid motor vehicle dealer license.
12 A dealer or manufacturer shall annually file an application with the motor vehicle
13 division for a dealer license for each established place of business of the dealer or
14 manufacturer.

15 B. A person shall file an application for a dealer license with the motor
16 vehicle division of the taxation and revenue department on a form prescribed by the
17 motor vehicle division. The application shall contain the name, address and telephone
18 number of the applicant, the signature of the applicant or the signatures of all of the
19 officers of a corporate applicant, the address of the established place of business, the
20 federal taxpayer identification number of the applicant and other information that the
21 motor vehicle division may require. The application shall state that the applicant will
22 engage in business as a dealer. The statement shall be verified before a state officer
23 authorized to administer an oath. The fee for a dealer license shall be prescribed by
24 the motor vehicle division but shall not exceed fifty dollars (\$50.00) annually.

25 C. The motor vehicle division of the taxation and revenue department
shall issue a dealer license to an applicant who submits a complete application and full
payment of the dealer license fee to the motor vehicle division. The license shall
contain the following:

- (1) the license number;

- 1 (2) the expiration date of the license;
2 (3) the name and business address of the licensee;
3 (4) the address of the location for which the license was
4 issued; and
5 (5) a statement requiring that the license be conspicuously
6 displayed at the location for which the license was issued.

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7 D. A dealer license shall specify the location of each place of business
8 in which the licensee engages in business as a dealer. The dealer shall notify the
9 motor vehicle division of the taxation and revenue department of a change of
10 ownership, location or name of the place of business within ten days of the change.

11 E. A dealer license shall authorize the licensed activity at only one
12 business establishment. A dealer shall obtain a supplemental license from the motor
13 vehicle division of the taxation and revenue department for each additional
14 establishment owned or operated by the dealer. The application for a supplemental
15 license shall be in a form prescribed by the motor vehicle division. The motor vehicle
16 division shall issue a supplemental license to an applicant who possesses a valid
17 dealer license, submits a complete application and meets all other requirements of the
18 motor vehicle division.

19 F. A dealer license or supplemental license shall be conspicuously
20 displayed at the location of the established place of business for which it was issued."

21 Section 6. A new section of the Boat Act is enacted to read:

22 "DEALER LICENSE DENIAL, SUSPENSION AND REVOCATION.--The motor
23 vehicle division of the taxation and revenue department may deny, suspend or revoke
24 a dealer license for:

- 25 A. a material misrepresentation communicated by a dealer to the
motor vehicle division;
B. a lack of fitness as proscribed by rule of the motor vehicle division;
or
C. a willful violation of a federal or state law relating to the sale,

1 distribution, financing, registration, taxing or insuring of motorboats."

2 Section 7. A new section of the Boat Act is enacted to read:

3 "DEALER BONDS--REQUIRED INSURANCE.--A person licensed as a dealer
4 pursuant to the Boat Act shall file with the state parks division a bond in the amount of
5 fifty thousand dollars (\$50,000) unless there is a bond on file with the motor vehicle
6 division of the taxation and revenue department for a motor vehicle dealer's license
7 and such proof is submitted to the state parks division. The bond shall be issued by a
8 corporate surety licensed to conduct business within the state. The bond shall be
9 issued under the condition that the applicant shall not practice fraud or violate any
10 provision of the Boat Act. A person who has obtained a dealer license shall furnish
11 evidence that the person has liability insurance for the established place of business
12 for which the license was obtained."

13 Section 8. A new section of the Boat Act is enacted to read:

14 "BOAT ACT VIOLATION--PENALTY.--A person who violates any provision of
15 the Boat Act is guilty of a misdemeanor and shall be punished by a fine of three
16 hundred dollars (\$300) or by imprisonment for at least thirty days, or both."

17 Section 9. REPEAL.--Section 66-4-8 NMSA 1978
18 (being Laws 1978, Chapter 35, Section 221, as amended)
19 is repealed.
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